

The complaint

Miss W, through a representative has complained that Indigo Michael Limited (trading as Safety Net Credit (SNC)) didn't complete enough affordability checks before approving her facility.

What happened

Miss W approached SNC for a Safety Net facility in October 2017. This was a running credit account where a consumer could either request funds up to their credit limit, or funds would be deposited into their bank account once their account balance fell below a "safety net" amount of the customer's choosing. Miss W was not advanced a payday loan.

Miss W was initially given a facility of a £100 and her limit was increased on a further two occasions with her final increase – taking the credit limit to £160 in February 2018. Miss W had some problems repaying her facility, but the balance was repaid in March 2021.

One of our adjudicator's looked at Miss W's complaint. She thought the checks SNC carried out before granting this facility were proportionate and showed SNC Miss W had sufficient disposable income to afford the minimum repayment which was due.

The adjudicator also concluded that by the credit limit increase (to £130) in January 2018 SNC ought to have stopped allowing Miss W from using the facility. She said there were signs that Miss W was having financial difficulties. The adjudicator said this because in November and December 2017 Miss W started to make payments to a third-party collection agency for three credit accounts. At this point in time, in the adjudicator's view SNC should've offered her forbearance.

Miss W's representative didn't acknowledge the assessment.

SNC disagreed with the assessment. In summary, it made the following points;

- There was no indication that Miss W couldn't afford her repayments.
- Miss W's outgoing credit commitments don't significantly change.
- The increase in the credit limit didn't increase the contractual minimum repayments.

As no agreement could be reached the complaint was passed to me and I proceed to issue a provisional decision explaining the reasons why I was intending to uphold Miss W's complaint in part but just at a different point to the adjudicator. A copy of the provisional findings follows this in italics and a smaller font and forms part of this final decision.

What I said in my provisional decision

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the facility was provided.

To start with, Miss W wasn't given a payday loan. Instead she was provided with a credit facility where there was an expectation it would be repaid within a reasonable period of time. Interest is charged on any balance at 0.8% per day for the first 40 days following the drawdown. After the 40 days, a consumer will pay no further interest on that drawdown.

Throughout the lifetime of a consumer having the facility SNC maintains read-only access to their bank statements, to allow it to monitor a consumer finances and to allow it to carry out additional affordability assessments.

Finally, Miss W's expected repayment would be calculated to be 5% of the amount due plus any interest, fees or charges. But a minimum amount of £20 would be expected to be paid. Therefore, when Miss W's facility was approved for £100 SNC needed to satisfy itself that Miss W would be in a position to make the repayment of £20, by carrying out a proportionate check.

In this case, SNC had a fairly good idea of Miss W's income and expenditure because it had 'read-only' access to her bank statements for the 90 days preceding the facility being granted. It then used an algorithm to establish what Miss W's income and expenditure was, and after completing this check, in this case, SNC was satisfied that Miss W could afford the minimum repayment towards the facility.

It also carried out a credit search before the facility was granted. I've considered the summary of results SNC has provided, and there is an indication that within the last year the problems repaying a credit account led to that provider (or a third party) seeking a County Court Judgement (CCJ) against Miss W for £992. On top of this SNC seems to have been aware that she had three accounts being recorded as in default. However, the summary provided by SNC doesn't indicate when these accounts moved into default.

At the very least, the credit results showed that Miss W had previously had some quite significant payment problems and these were potentially quite recent given the CCJ was recorded within the year before the facility was granted – but no further information has been provided about the exact date this occurred. So, I do have some concerns about the credit file data.

In addition, I also have concerns about Miss W's income. She told SNC that she worked for a particular cleaning company – but looking at the initial transaction data there are transfers from such company but they aren't regular and so SNC ought to have made some further enquiries into this. For example, there is one payment in August 2017, two in September 2017 and none in October 2017. But there is a payment, on a different date for a considerably smaller sum. In addition, there are also tax credit payments.

In addition, there are lots of transfers between the account SNC had access to and another of Miss W's account. But I'll come on to this later.

Notwithstanding my initial concerns about the credit file data and Miss W's income, it would appear Miss W seems to accept our adjudicator's opinion, that SNC wasn't wrong to approve her running credit facility. For the avoidance of doubt, I also don't think SNC was wrong to have initially granted the facility. So, I say no more about it.

So, this decision will focus on whether it was reasonable for SNC to have increased Miss W's credit limit given what was apparent in her bank transaction data.

Although I don't think SNC was wrong to have initially granted the facility, I also don't think the credit limit increase was unaffordable for Miss W either – this differs in the outcome that the adjudicator reached. I'll explain below why I think this is the case.

At the time, and during the use of the facility, SNC was regulated by the Financial Conduct Authority. The guidance and rules for credit providers has been laid out by the FCA in its Consumer Credit Sourcebook (CONC). I think it reasonable to see what the FCA has said in

CONC and how it applies to this case.

CONC (6.7.2) SNC had to:

"[A firm must] monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties"

And CONC 1.3 outlines some examples of what "financial difficulties" (which, of course, would be intrinsically linked to, and at the heart of, any "repayment difficulties") may look like – but CONC 1.3 makes it clear the list is not exhaustive.

So CONC sets out that SNC was required to monitor Miss W's use of the facility and then CONC 1.3 provides indications which could suggest that a customer was in financial difficulty.

In addition to this, SNC has a good indication of Miss W's actual financial position, because throughout the time of her having the facility it had 'read-only' access to her bank account – since August 2017.

When the credit limit was increased further in January 2018, the adjudicator thought the point had now been reached when the facility ought to have been suspended, because through November and December 2017 three new payments to a debt company had appeared in her bank statements. In addition, there were outstanding payday loans as well.

I've thought about this carefully as to whether this is sufficient to be able to uphold the complaint. However, while the appearance of new payments to a third-party debt company are concerning – as well as use of other high-cost short term loans - these factors may be an indicator of potential financial difficulties. In this case I've placed more weight on the apparent other source of income Miss W had.

It seems that around the time the credit facility had been approved there was a change of circumstances. I can see from the bank transaction data that leading up to the credit limit increase Miss W was in receipt of benefits each month. But, in addition to these benefit payments there also seem to be a number of transfers into her account – which appear to have come from other account(s) of hers.

For example, in December 2017, on top of the tax credits Miss W received £1,100 from this other account(s) in her name. It's worth saying here that these credits were for more than the amount she received in benefits. Yet in December 2017 she appears to have only transferred £45 to this other account.

In January 2018, the month in which the final credit limit took place, she received over £560 worth of credits from the account(s). Yet she only moved around £365 into those accounts. A similar pattern was also visible in February, March and April 2018.

Over a four-month period – between December 2017 and March 2018 Miss W received nearly £3,000 into her account through transfers and paid out £1,800. Given, that Miss W received nearly £1,200 more in that timeframe compared to what she returned, and with no further explanation from either her or the representative, I can't fairly say that Miss W couldn't afford the increase credit limit when I know there is potentially another source of income and or savings held in other accounts.

Now, the appearance of another account isn't enough on its own not to uphold the complaint. But, when more funds are being transferred in than being moved out, this does pose the question of what the source of these transfers was. Were these funds being taken from a savings account that Miss W was dipping into to help her get through the month before – as far as possible replenishing the funds.

There are other reasons that could explain the transfers, for example another account with earnings in or loan(s) from friends and family. But given what SNC could see in the bank

transactions data, I do think it needed to explore these transfers further. Which is what the Financial Ombudsman has attempted to do. Further questions have been asked of Miss W's representative about these transfers. However, despite being asked for a response, no acknowledgment has been received.

This means, I can't say and don't know what that other source of income was. As I've said above, it could be a loan from family / or friends, savings or something else. But without any further explanation I don't think it's fair to uphold the complaint at the point the adjudicator did because there could be further funds that Miss W had access to, and after all SNC was entitled to consider income and or savings when deciding whether the facility was affordable for Miss W.

Of course, in response to this provisional decision Miss W (or her representative) has the opportunity to provide the further information then this can be reviewed before a final decision is issued.

I can see that Miss W stops using the facility in March 2019. So, I've gone on to consider whether after January 2018 was there a point which shows that either the facility was no longer affordable for her or became unsustainable for some other reason.

I've done this in order to see whether I think it was fair to allow Miss W to continue to drawdown, I've considered the relationship between when repayments were made to SNC, the value of those payments and then when Miss W returned for further borrowing. After all, if Miss W was drawing down similar sums within days of SNC taking a payment from her account this ought to have indicated that SNC was causing her to once again borrow the funds that SNC had just taken.

From January 2018 a similar pattern can be seen, Miss W continues to receive tax credits as well as varying amounts of credits from other accounts in her name. But there is a change in usage of the account that SNC had access to from June 2018.

By June 2018 is the first month where Miss W doesn't receive any transfers and so her only source of income that month is tax credits as well as deposits from SNC. There also seems to be lack of living costs this month – which is the first time this happens. By June 2018 the only living costs I can see are for an online media subscription company and some sort of insurance. This, to me is a worry because it may be the start of Miss W no longer using the account that SNC had access to as her main account and therefore it wouldn't be in a position to carry out its ongoing affordability assessment.

In July 2018 there are no living costs at all visible in the bank statement, the only debits from the account are ones that are paid to SNC totally over £550. Which is over half of her income that month.

On top of this £550 payments to SNC I find it hard to believe that all of Miss W's living costs had dried up. It's far more likely that Miss W was using another account to manage these. So, by July 2018 SNC had no way of knowing how much her living costs were each month. However, as part of the monitoring the facility I've also considered the relationship between the payments to and from SNC.

By monitoring the facility – as it was required to do, SNC would've realised that Miss W would repay her facility in full, and then within a day or so, she'd draw back up to her available credit limit. But this was happening multiple times a month. So, in June 2018 Miss W did this at least three times and in July 2018. Miss W borrowed up to (or close to) her credit limit and then repaid it in full a few days later on four separate occasions.

When considering all of the information SNC had available to it about Miss W's circumstances along with the payments SNC was collecting each month, I think by 1 August 2018, it was clear that the facility had become unsustainable - and simply collecting the full outstanding balance on the account and then allowing Miss W to once again borrow the funds that had been recently collected was detrimental to her financial situation. Especially

considering the number of times this happened per month and the lack of any living costs which were now no longer visible in the bank transaction data. But instead of doing this SNC allowed Miss W to continue to use the facility. This meant that it would default to taking even larger payments from Miss W's account thus leaving a greater hole in her finances.

Overall and having thought about everything I think that SNC should've proactively intervened and contacted Miss W to arrange for her to repay what she owed within a reasonable period of time. I'm therefore intending to uphold Miss W's complaint from 1 August 2018.

Response to the Provisional Decision

Both Miss W and SNC were asked to provide anything further for consideration as soon as possible but no later than 17 November 2022.

Neither Miss W (or her representative) responded to the provisional decision even though they were chased for one.

SNC emailed the Financial Ombudsman Service to let us know that it agreed with the proposed outcome in the provisional decision. It also provided a calculation table that showed, the total compensation payable to Miss W would be around £414.52.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Miss W hasn't provided anything further for consideration and SNC has made it clear that it accepted the proposed outcome as outlined in the provisional decision.

I therefore see no reason to depart from the findings I made in the provisional decision, and I still think SNC was wrong to have allowed Miss W to continue to use the facility after 1 August 2018.

Outlined below is what SNC should and what it has already agreed to do, in order to put things right for Miss W.

Putting things right

- A. Remove all the unpaid interest, fees and charges from the account from 1 August 2018.
- B. Treat all payments Miss W has made towards their account since 1 August 2018 as though they had been repayments of outstanding principal.
- C. If at any point Miss W would've been in credit on her account after considering the above, SNC will need to refund any overpayments with 8% simple interest* calculated on these payments, from the date they would have arisen, to the date the refund is paid.
- D. SNC should remove any adverse payment information recorded on Miss W's credit file from 1 August 2018.

*HM Revenue & Customs requires SNC to take off tax from this interest. SNC must give Miss W a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Miss W's complaint in part.

Indigo Michael Limited (trading as Safety Net Credit) should put things right for Miss W as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 16 December 2022.

Robert Walker
Ombudsman